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Remarks

Restriction/Election

Restriction was made under 35 U.S.C. §121 between Group I, claims 1-13 and 23-25, drawn to devices and Group II, claims 14-22, drawn to methods of making devices.

Applicants made a provisional election with traverse the prosecute Group I, claims 1-13 and 23-25, drawn to devices. Applicants affirm the election of Group I, claims 1-13 and 23-25. Applicants reserve the right to prosecute Group II, claims 14-22 in a divisional application.

Objections

Claim 17 has been objected to because "copolymer" is misspelled. Applicants have amended claim 17 to correct the misspelling.

Rejections

35 U.S.C. §112

Claims 4, 5, 12 and 19 have been rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action asserts that it is not understood what "coextensive along at least a portion of the length" means, and that it is not clear what "maleated" means in claims 12 and 19.

Claims 4 and 5 have been amended. Applicants believe this amendment to clarify the claims. Support for the amendment is found from figures 2, 5 and 6. Applicants respectfully request withdrawal of the rejection of claims 4 and 5 under 35 U.S.C. §112, second paragraph.

Applicants traverse the rejection with respect to claims 12 and 19.

"Maleated" is a term of art understood to those of ordinary skill.

Maleated polymers are those which have been grafted or copolymerized with maleic anhydride. See US 6605656, US 6515174 and US 6448333, enclosed herewith, for example. See also www. Eastman.com. Epolene® C-16 and C-18 are described as

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maleated polyethylenes and Epolene® G-3003 and Epolene G-3015 are described as maleated polypropylenes, for example.

Thus, Applicants submitted that the term maleated polyolefin is a term of art known to those of ordinary skill. Applicants respectfully request withdrawal of the rejection of claims 12 and 19 under 35 U.S.C. §112, second paragraph.

35 U.S.C. §102(b)

Claims 1, 2, 4, 5 and 8-12 have been rejected under 35 U.S.C. §102(b) as being anticipated by Samuelson et al. (US 6,165,166). The Office Action asserts that Samuelson et al. teach trilayer medical tubing (title) for catheters (col. 1, line 20).

Applicants traverse the rejection.

Samuelson et al. teach and claim *coextruded* flexible tubing suitable for use in a medical device comprising an outer layer, a core layer and an intermediate tie layer. Samuelson et al. do not suggest any other means of applying the tie layer.

The present invention, in contrast, is directed to a multilayer construction whereby the tie layer is a *powder coating*, not extruded. *Powder coating* is a special technique which may be employed for application of a polymeric composition. Applicants submit that the present invention teaches powder coating as a means of applying a layer to a medical device. See page 5, lines 10-13 of the present specification.

Since the composition is applied as a powder, and subsequently activated, the interfacial properties of the tie layer will not, relative to the first and second members, be identical to that of a coextrusion.

As Samuelson et al. do not claim or describe a powder coated tie layer, and as a rejection under 35 U.S.C. §102(b) requires that the reference meet every element of the claimed invention, Applicants respectfully request withdrawal of the rejection of claims 1, 2, 4, 5 and 8-12 as anticipated by Samuelson et al. under 35 U.S.C. §102(b).

35 U.S.C. §103(a)

Claims 6 and 7 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Samuelson et al. The Office Action asserts that Samuelson et al. fails to teach butt and lap joints between tubular members, but that it would have been obvious

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to one having ordinary skill in the art at the time that the invention was made to employ butt or lap joints in the production of catheters from the trilayer tubing of Samuelson.

Claims 6 and 7 depend from claim 1. As discussed above, Samuelson et al. fail to describe or claim a *powder coated* tie layer as found in claim 1 of the present application. Claims 6 and 7 depend from claim 1 and are patentable for at least the reasons that claim 1 is patentable. Applicants respectfully request withdrawal of the rejection of claims 6 and 7 under 35 U.S.C. §103(a) as being obvious over Samuelson et al.

Claims 3, 13 and 23-25 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Samuelson et al. as applied to claims 1, 2, 4, 5 and 8-12 above, and further in view of Graham et al. (US 4,602,058). The Office Action asserts that Samuelson et al. fail to teach the use of blends of polyamides and polyethylenes, or polymers compatible therewith, in tie layers for its trilayer tubing, but that Graham et al. teach that blends of polyamides (col. 1, lines 17-31) and polyolefins based on polyethylene (col. 1, line 64 through col. 2, line 3) in bonding layers for laminates (col. 12, lines 60-67).

Samuelson et al. is different for the reasons described above.

As Samuelson et al. teaches coextrusion of multilayer tubing and Graham et al. teaches blends, the combination of the blends of Graham et al. with the coextruded tubing of Samuelson et al., does not lead one of ordinary skill in the art to the multilayer construction of the present invention having a powder coated tie layer.

Applicants respectfully request withdrawal of the rejection of claims 3, 13, and 23-25 under 35 U.S.C. §103(a) as being obvious over Samuelson et al. in view of Graham et al.

CONCLUSION

Claims 1-13 and 23-25 are pending in the application. Applicants have addressed each of the issues presented in the Office Action. Applicants respectfully request reconsideration and an early allowance of the claims as presented.

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Respectfully submitted,

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